



**6351-01-P**

## **COMMODITY FUTURES TRADING COMMISSION**

### **Agency Information Collection Activities Under OMB Review**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (“PRA”), this notice announces that the Information Collection Request (“ICR”) abstracted below has been forwarded to the Office of Management and Budget (“OMB”) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before **[30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (“OIRA”) in OMB, within 30 days of the notice’s publication, by either of the following methods. Please identify the comments by OMB Control No. 3038-0091.

- By email addressed to: *OIRAsubmissions@omb.eop.gov* or
- By mail addressed to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street, NW., Washington DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (the “Commission”) by either of the following methods. The copies should refer to “OMB Control No. 3038-0062.”

- By mail addressed to: Christopher Kirkpatrick, Secretary of the Commission,  
Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street,  
NW., Washington, DC 20581;
- By Hand Delivery/Courier to the same address; or
- Through the Commission's website at <http://comments.cftc.gov>. Please follow the instructions for submitting comments through the website.

A copy of the supporting statements for the collection of information discussed herein may be obtained by visiting <http://RegInfo.gov>.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations. The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Lauren Bennett, Special Counsel, 202-418-5290, e-mail: [lbennett@cftc.gov](mailto:lbennett@cftc.gov), Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, and refer to OMB Control No. 3038-0062.

## **SUPPLEMENTARY INFORMATION:**

*Title:* Off-Exchange Foreign Currency Transactions (OMB Control No. 3038-0062).

This is a request for an extension of a currently approved information collection.

*Abstract:* Part 5 of the Commission's regulations under the CEA establishes rules applicable to retail foreign exchange dealers ("RFEDs"), futures commission merchants ("FCMs"), introducing brokers ("IBs"), commodity trading advisors ("CTAs"), and commodity pool operators ("CPOs") engaged in the offer and sale of off-exchange forex contracts to retail customers. Specifically:

- *Regulation 5.5* requires RFEDs, FCMs, and IBs to distribute risk disclosure statements to new retail forex customers.
- *Regulation 5.6* requires RFEDs and FCMs to report any failures to maintain the minimum capital required by Commission regulations.
- *Regulation 5.8* requires RFEDs and FCMs to calculate their total retail forex obligation.
- *Regulation 5.10* requires RFEDs to maintain and preserve certain risk assessment documentation.
- *Regulation 5.11(a)(1)* requires RFEDs to submit certain risk assessment documentation to the Commission within 60 days of the effective date of their registration.
- *Regulation 5.11(a)(2)* requires RFEDs to submit certain financial documentation to the Commission within 105 calendar days of the end of each fiscal year. RFEDs must also submit additional information, if requested, regarding affiliates' financial impact on an RFED's organizational structure.
- *Regulation 5.12(a)* requires RFED applicants to submit a Form 1-FR-FCM concurrently with their registration application.

- *Regulation 5.12(b)* requires registered RFEDs to file a Form 1-FR-FCM on a monthly and annual basis.
- *Regulation 5.12(g)* states that, in the event that an RFED cannot file its Form 1-FR-FCM for any period within the time specified in Regulation 5.12(b), the RFED may file an application for an extension of time with its self-regulatory organization.
- *Regulation 5.13(a)* requires RFEDs and FCMs to provide monthly account statements to their customers.
- *Regulation 5.13(b)* requires RFEDs and FCMs to provide confirmation statements to their customers within one business day after the execution of any retail forex or forex option transaction.
- *Regulation 5.14* requires RFEDs and FCMs to maintain current ledgers of each transaction affecting its asset, liability, income, expense and capital accounts.
- *Regulation 5.18(g)* requires each RFED, FCM, CPO, CTA, and IB subject to Part 5 to maintain a record of all communications received that give rise to possible violations of the Act, rules, regulations or orders thereunder related to their retail forex business.
- *Regulation 5.18(i)* requires each RFED and FCM to prepare and maintain on a quarterly basis a calculation of non-discretionary retail forex customer accounts open for any period of time during the quarter that were profitable, and the percentage of such accounts that were not profitable.
- *Regulation 5.18(j)* requires the CCO of each RFED and FCM to certify annually that the firm has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with the Act, rules, regulations and orders thereunder.

- *Regulation 5.19* requires each RFED, FCM, CPO, CTA, and IB subject to Part 5 to submit to the Commission copies of any dispositive or partially dispositive decision for which a notice of appeal has been filed in any material legal proceeding (1) to which the firm is a party to or to which its property or assets is subject with respect to retail forex transactions, or (2) instituted against any person who is a principal of the firm arising from conduct in such person's capacity as a principal of that firm.
- *Regulation 5.20* requires RFEDs, FCMs and IBs to submit documentation requested pursuant to certain types of special calls by the Commission.
- *Regulation 5.23* requires RFEDs, FCMs and IBs to notify the Commission regarding bulk transfers and bulk liquidations of customer accounts.

The rules establish reporting and recordkeeping requirements that are necessary to implement the provisions of the Food, Conservation, and Energy Act of 2008<sup>1</sup> regarding off-exchange transactions in foreign currency with members of the public. The rules are intended to promote customer protection by providing safeguards against irresponsible or fraudulent business practices.<sup>2</sup>

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On September 18, 2017, the Commission published in the Federal Register notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 82 FR 43527. The Commission received no relevant comments.

---

<sup>1</sup> Public Law 110-246, 122 Stat. 1651, 2189-220 (2008).

<sup>2</sup> See Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 Fed. Reg. 55410, 55416 (Sept. 10, 2010).

*Burden Statement:* The Commission is revising its estimate of the burden for this collection to reflect the current number of affected registrants and revised burden estimates.

Accordingly, the respondent burden for this collection is estimated to be as follows:

- *Number of Registrants:* 169.
- *Estimated Average Burden Hours Per Registrant:* 777.
- *Estimated Aggregate Burden Hours:* 131,259.
- *Frequency of Recordkeeping:* As applicable.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: November 22, 2017

Robert N. Sidman,

*Deputy Secretary of the Commission.*

[FR Doc. 2017-25698 Filed: 11/27/2017 8:45 am; Publication Date: 11/28/2017]